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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,448	07/26/2001	Charles L. Wilson	0145.00	4447

25295 7590 12/04/2002  
USDA, ARS, OTT  
5601 SUNNYSIDE AVE  
RM 4-1159  
BELTSVILLE, MD 20705-5131

[REDACTED] EXAMINER

WEINSTEIN, STEVEN L

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1761

DATE MAILED: 12/04/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	09/912448	Applicant(s)	WILSON ET AL
Examiner	S. WEINSTEIN	Group Art Unit	1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

Responsive to communication(s) filed on \_\_\_\_\_

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-20 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

### Application Papers

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All  Some\*  None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

Copies of the certified copies of the priority documents have been received  
in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 4  Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

## Office Action Summary

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 10-13 and 16-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Atsumi et al (Jp 2000217509 –Ref N).

Atsumi et al discloses a freshness retaining composition that includes both the recited chitosan and the recited hinokitiol (an essential oil). Atsumi et al discloses the two antibacterial agents to be within the disclosed amounts, so that the composition of Atsumi et al would inherently achieve any synergistic result that applicants' composition is capable of achieving. Atsumi et al also teaches bringing vegetables including cut vegetables into direct contact with the freshness retaining/antibacterial composition.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 6-9, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atsumi et al in view of Takahashi (6,352,727).

Claims 3 and 6 recite a number of "optional" ingredients to be added to the antibacterial composition. As evidenced by Takahashi (e.g. col. 6, para. 3) it is known to add various additives to an antibacterial composition for its particular functionality such as the recited antioxidants and stabilizers and surfactants and to add such ingredients to the composition of

Atsumi et al for their art recognized and applicants' intended function would have been obvious. Similarly, Takahashi teaches the many varieties of vehicles that the art conventionally uses to introduce the anti-bacterial composition such as wipes (claim 7), spray dispenser (claim 8) and packaging material (claim 9). See e.g. in this regard, col. 31, para. 1 and col. 7, para. 5 and 8 of Takahashi. To therefore modify Atsumi and provide the antibacterial composition in conventional vehicles would have been obvious.

The remainder of the references cited on the USPTO 892 forms are cited as pertinent art. Note that the art appears to be replete with examples of antibacterial compositions which contain both chitosan and an essential oil such as hinokitiol and these compositions would therefore be expected to show synergistic results.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
11/27/02